PD-0480-17
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 7/25/2017 1:59 PM
Accepted 7/27/2017 10:46 AM
DEANA WILLIAMSON
CLERK

NO. PD-0480-17

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
7/27/2017
DEANA WILLIAMSON, CLERK

EX PARTE: HECTOR MACIAS

THE STATE'S BRIEF ON PETITION FOR DISCRETIONARY REVIEW

FROM THE COURT OF APPEALS, EIGHTH DISTRICT OF TEXAS
CAUSE NUMBER 08-15-00013-CR

JAIME ESPARZA
DISTRICT ATTORNEY
34th JUDICIAL DISTRICT

LILY STROUD
ASST. DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
201 EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO
EL PASO, TEXAS 79901
(915) 546-2059 ext. 3769
FAX (915) 533-5520
EMAIL lstroud@epcounty.com
SBN 24046929

ATTORNEYS FOR THE STATE

IDENTITY OF PARTIES AND COUNSEL

APPELLANT: Hector Macias, represented in the trial court, on appeal, and on petition for discretionary review by:

Max Daniel Munoz
1413 Wyoming
El Paso, Texas 79902

and also on appeal and on petition for discretionary review by:

Matthew DeKoatz
718 Myrtle Ave.
El Paso, Texas 79901

APPELLEE: The State of Texas, 34th Judicial District Attorney's Office, represented in the trial court by:

Jaime Esparza, District Attorney
Alyssa Nava and Michael Domingo, Assistant District Attorneys

on appeal by:

Jaime Esparza, District Attorney
Raquel Lopez, Assistant District Attorney

on petition for discretionary review by:

Jaime Esparza, District Attorney
Lily Stroud, Assistant District Attorney
500 E. San Antonio, Suite 201
El Paso, Texas 79901

TRIAL COURT: County Criminal Court at Law Number Four, Judge Jesus R. Herrera, presiding

COURT OF APPEALS: Eighth Court of Appeals, Honorable Chief Justice Ann Crawford McClure, Justice Yvonne T. Rodriguez, and Justice Steven L. Hughes

TABLE OF CONTENTS

INDEX OF AUTHORITIES

FEDERAL CASES

STATE CASES

CONSTITUTIONS

STATUTES

RULES

REFERENCE MATERIALS

STATEMENT OF THE CASE

The State successfully appealed the trial court's pretrial order granting Hector Macias's (appellant's) motion to suppress his statements. (CR:36, 38, 43-44, 56, 58-63); *see also State v. Macias*, No. 08-12-00107-CR, 2013 WL 5657979 (Tex.App.–El Paso, Oct. 16, 2013, no pet.) (not designated for publication).[1] When the State realized, during Macias's subsequent trial for family-violence assault, which commenced on January 16, 2014, that mandate had not yet issued on the State's appeal of the pretrial suppression order, it immediately advised the trial court that it lacked jurisdiction to proceed on the case. (RR2:266). Agreeing that it had no jurisdiction to conduct the trial, the trial court adjourned the proceedings and dismissed the jury. (CR:8-9, 74); (RR2:272, 274-75). The trial court subsequently denied Macias's application for habeas-corpus relief on double-jeopardy grounds, which Macias timely appealed. (CR:92-94, 101, 103-04).

On December 14, 2016, in an unpublished opinion, the Eighth Court reversed the denial of Macias's application for writ of habeas corpus with

[1] Throughout this brief, references to the record will be made as follows: references to the clerk's record will be made as "CR" and page number, references to the two-volume reporter's record will be made as "RR" and volume and page number, and references to the one-volume supplemental reporter's record will be made as "SRR" and page number.

instructions for the trial court to grant Macias habeas relief and to dismiss the indictment. Specifically, the Eighth Court rejected the State's argument that Macias had inadequately briefed the basis of his double-jeopardy complaint and sustained Macias' sole issue presented for review, holding that: (1) rule 25.2(g) of the Texas Rules of Appellate Procedure, which deprives a trial court of jurisdiction until issuance of an appellate-court mandate, applies only to an appeal arising from a final judgment of conviction and not to an interlocutory appeal, such that the trial court retained jurisdiction during the pendency of the State's interlocutory appeal and could proceed to a trial on the merits on the underlying criminal case before mandate issued, (2) the Eighth Court's judgment "became effective" on the same date it handed down its opinion (October 16, 2013) because it had only stayed the underlying proceedings "pending further order of [the] Court," and its October 16, 2013, judgment and opinion constituted such "further order," and (3) because the trial court improperly terminated the trial on the erroneous belief that it lacked jurisdiction prior to the issuance of the mandate, Macias's retrial was jeopardy barred. *See Ex parte Macias*, No. 08-15-00013-CR, 2016 WL 7228898 at *1, 8-9 (Tex.App.–El Paso, Dec. 14, 2016, pet. granted) (not designated for publication). The State timely moved for rehearing on December

29, 2016, which the Eighth Court denied, without written opinion, on April 19, 2017.

On May 19, 2017, the State timely filed its petition for discretionary review (PDR), which this Court granted on the following ground: "The Eighth Court's holding that rule 25.2(g)'s jurisdictional bar does not apply to deprive a trial court of jurisdiction pending issuance of the mandate on a State's interlocutory appeal–the basis of the Eighth Court's ultimate conclusion that Macias's pre-mandate trial was improperly terminated and his retrial jeopardy barred–was erroneous and impermissibly abridged the State's right to appeal under article 44.01." By order of this Court, oral argument will not be permitted.

GROUNDS FOR REVIEW

SOLE GROUND FOR REVIEW: The Eighth Court's holding that rule 25.2(g)'s jurisdictional bar does not apply to deprive a trial court of jurisdiction pending issuance of the mandate on a State's interlocutory appeal–the basis of the Eighth Court's ultimate conclusion that Macias's pre-mandate trial was improperly terminated and his retrial jeopardy barred–was erroneous and impermissibly abridged the State's right to appeal under article 44.01.

STATEMENT OF FACTS

On March 27, 2012,[2] the State appealed the trial court's order granting Macias's motion to suppress, (CR:43-44), the grant of which the Eighth Court reversed on October 16, 2013. (CR:56, 58-63); *State v. Macias*, No. 08-12-00107-CR, 2013 WL 5657979 (Tex.App.–El Paso, Oct. 16, 2013, no pet.) (not designated for publication). Despite mandate not yet having issued on that appeal (and despite the Eighth Court's April 11, 2012, stay order),[3] the trial court called the case for trial on January 16, 2014. (CR:72); (RR2). Macias did not object to proceeding to trial in the absence of the Eighth Court's mandate. *See generally* (RR2). The parties, having presented their evidence, rested and closed, and the jury was charged. (RR2:257-65). At that point, the State noticed that the Eighth Court's mandate in the previous State's appeal had not yet issued and immediately informed the trial court that, until the Eighth Court issued its mandate on the October 16, 2013, judgment (reversing the trial court's order granting Macias's motion to suppress), the trial court lacked jurisdiction to try the case.

---

[2] The appellate record in the State's appeal of the trial court's suppression order was filed in the Eighth Court on May 8, 2012. *See* (Letter/Notice of Filing of Clerk's and Reporter's Records in the Eighth Court's file on related appeal, 08-12-00107-CR); *see also Ex parte Macias*, 2016 WL 7228898 at *5.

[3] On April 11, 2012, the Eighth Court entered an order staying the trial-court proceedings during the pendency of the State's appeal of the trial court's suppression order. *See Ex parte Macias*, 2016 WL 7228898 at *1.

(RR2:266).[4] Agreeing that it had no jurisdiction to conduct the trial, the trial court adjourned the proceedings and dismissed the jury. (RR2:272, 274-75) ("Well, that being the case, I have no jurisdiction to be trying this case...I will have to excuse the jury.").[5] The Eighth Court's mandate then issued on January 30, 2014. (CR:75-76).

Subsequently, Macias filed an application for writ of habeas corpus, requesting dismissal of his case on double-jeopardy grounds. (CR:92-94). During the trial court's writ-of-habeas-corpus hearing on December 17, 2014, Macias argued that, because he had already been tried for the charged offense on January 16, 2014, the State was precluded from re-trying him for the same offense. (SRR:5-6). Specifically, Macias pointed to the fact that the State had announced

---

[4] One of the State's attorneys appeared in the trial court on January 16, 2014, and, citing *Drew v. State*, 765 S.W.2d 533 (Tex.App.–Austin 1989), *pet. dism'd as improvidently granted*, 805 S.W.2d 451 (Tex.Crim.App. 1991), and after confirming with the Eighth Court that its mandate had not yet issued, advised the trial court that it had no jurisdiction to try the case, (RR2:266, 268-69), and that "until mandate issues, everything is essentially a nullity." (RR2:272).

[5] Although the trial court did not label its actions as such, it effectively declared a mistrial. *See Lee v. United States*, 432 U.S. 23, 30, 97 S.Ct. 2141, 2145-46, 53 L.Ed.2d 80 (1977) (holding that a trial court's "dismissal," although labeled as such, was functionally indistinguishable from a declaration of mistrial, in that the court granted the motion to dismiss on the grounds that the indictment was drawn improperly, in contemplation of a second prosecution). Here, the trial court, agreeing it had no jurisdiction to proceed, terminated the January 16, 2014, jury trial in contemplation of a second prosecution, although it used the word "adjourn" rather than "mistrial." *See* (RR2:274-75) ("We are going to adjourn this matter until such time as can get notice from the [Eighth Court] that we can try it again. It will be tried on an accelerated basis to see if we can get this case finally disposed of.... We are adjourned.").

ready for trial, a jury was selected and sworn, evidence was presented, and the jury had been charged. (SRR:5-6). In short, Macias contended that the United States Constitution's double-jeopardy clause prohibited "dress rehearsals" and that because he had "[gone] through the whole thing," he was entitled to habeas relief. (SRR:10-18).

The prosecutor argued that the double-jeopardy issue did not arise because the trial court had no jurisdiction to try the case in the first place. (SRR:6-7). Relying on *Drew v. State*, 765 S.W.2d 533 (Tex. App.–Austin 1989), *pet. dism'd as improvidently granted*, 805 S.W.2d 451 (Tex.Crim.App. 1991), the prosecutor explained that once the State appealed the trial court's order granting Macias's motion to suppress statements, jurisdiction over the case rested with the Eighth Court until it issued its mandate. (SRR:7). Thus, with regard to Macias's double-jeopardy claim, the threshold question of whether the trial court had jurisdiction over the case on the date of trial had to be answered in the negative. (SRR:9). As such, when the trial court purported to conduct a trial over which it had no jurisdiction (because the Eighth Court had not yet issued its mandate on January 16, 2014), jeopardy did not (and could not) attach, (SRR:9), making the double-jeopardy claim a non-issue. The trial court denied Macias's requested habeas relief. (CR:101).

SUMMARY OF THE STATE'S ARGUMENTS

Under the plain language of article 44.01(e) of the Code of Criminal Procedure, which provides that the State is entitled to a stay of the proceedings pending the disposition of a State's appeal of a trial court's suppression order, and rule 25.2(g) of the Rules of Appellate Procedure, the trial court was deprived of jurisdiction over the underlying criminal case from the time the State appealed the trial court's suppression ruling under article 44.01(a) until the issuance of the appellate-court mandate. The Eighth Court's erroneous construction of rule 25.2(g) as allowing a trial court to retain jurisdiction over, and proceed to a trial on the merits of, the underlying criminal case pending the disposition of a State's interlocutory appeal, as well as its failure to consider, or even mention, article 44.01(e), failed to give proper effect to both rule 25.2(g) and article 44.01(e) and impermissibly abridged the State's right to appeal under article 44.01.

And because the trial court had no jurisdiction to try the case on its merits on January 16, 2014, the trial proceedings were null and void in their entirety, such that jeopardy never attached, the trial court's termination of the proceedings was proper, and Macias's retrial is not jeopardy barred. Consequently, the Eighth Court erred in reversing the trial court's denial of Macias's requested habeas relief on the basis of a double-jeopardy violation.

ARGUMENT AND AUTHORITIES

SOLE GROUND FOR REVIEW: The Eighth Court's holding that rule 25.2(g)'s jurisdictional bar does not apply to deprive a trial court of jurisdiction pending issuance of the mandate on a State's interlocutory appeal–the basis of the Eighth Court's ultimate conclusion that Macias's pre-mandate trial was improperly terminated and his retrial jeopardy barred–was erroneous and impermissibly abridged the State's right to appeal under article 44.01.

In its opinion, the Eighth Court held that because the trial court never lost jurisdiction to act on the underlying criminal case during the pendency of the State's appeal of the trial court's order granting Macias's suppression motion, Macias's pre-mandate trial was not a nullity and was improperly terminated, such that his retrial is jeopardy barred. *See Ex parte Macias*, 2016 WL 7228898 at *7 ("[W]e conclude that the trial court never lost continuing jurisdiction over the case simply because the State brought an interlocutory appeal over the suppression of evidence."). For the following reasons, the Eighth Court's: (1) construction of rule 25.2(g) as allowing a trial court to retain jurisdiction over, and proceed to a trial on the merits of, the underlying criminal pending the disposition of a State's interlocutory appeal, and (2) failure to consider, or even mention, article 44.01(e), which provides that the State is entitled to a stay of the proceedings pending the disposition of such an appeal, erroneously failed to give proper effect to both rule 25.2(g) and article 44.01(e) and impermissibly abridged the State's right to appeal

under article 44.01. *See* TEX. CRIM. PROC. CODE art. 44.01(e); TEX. R. APP. P. 25.2(g).

I. Under the plain language of article 44.01(e) and rule 25.2(g), the trial court was deprived of jurisdiction from the time the State appealed the trial court's ruling under article 44.01(a) until the issuance of the appellate-court mandate.

When a reviewing court interprets a statute, the court should seek to effectuate the collective intent or purpose of the legislators who enacted the legislation. *See State v. Robinson*, 498 S.W.3d 914, 920 (Tex.Crim.App. 2016), *citing Boykin v. State*, 818 S.W.2d 782, 785 (Tex.Crim.App. 1991). In so doing, the court focuses its attention on the literal text of the statute in question and attempts to discern the fair, objective meaning of that text at the time of its enactment. *See Robinson*, 498 S.W.3d at 920. If the meaning of the statutory text, when read using the established canons of construction relating to such text, should have been plain to the legislators who voted on it, the reviewing court should ordinarily give effect to that plain meaning. *See id*. But a reviewing court can look beyond the text and consult extratextual sources if the statute's plain language is ambiguous or would lead to absurd results that the Legislature could not have possibly intended. *See id*.

In construing a court rule, a reviewing court attempts to effectuate the plain language of the rule unless there are important countervailing considerations. *See Bruton v. State*, 428 S.W.3d 865, 873 (Tex.Crim.App. 2014), *citing Nava v. State*, 415 S.W.3d 289, 306 (Tex.Crim.App. 2013). Unlike the standard for construing statutes, the standard for construing court rules permits the consideration of extratextual factors, even if the text of the rule is not ambiguous and does not lead to absurd results. *See Bruton*, 428 S.W.3d at 873. Extratextual factors include, but are not limited to, the object sought to be attained, common law or former provisions, and the consequences of a particular construction. *See Nava*, 415 S.W.3d at 306. Additionally, a reviewing court's interpretation or construction of a particular rule should not abridge, enlarge, or modify the substantive rights of a litigant. *See Lopez v. State*, 18 S.W.3d 637, 640 (Tex.Crim.App. 2000); *see also* TEX. GOV'T CODE § 22.108(a) (providing that the Rules of Appellate Procedure may not abridge, enlarge, or modify the substantive rights of a litigant).

The State's limited right to appeal is set out in article 44.01 of the Code of Criminal Procedure. *See* TEX. CRIM. PROC. CODE art. 44.01; *see also State v. Riewe*, 13 S.W.3d 408, 411 (Tex.Crim.App. 2000) (recognizing the State's right to appeal as limited). As it applies to this case, the State is entitled, under subsection (a) of article 44.01, to appeal an order granting a defendant's motion to suppress

evidence. *See* art. 44.01(a)(5). And article 44.01(e) provides that the State is entitled to a stay of the proceedings pending the disposition of a State's appeal filed under subsection (a):

> The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (a) or (b) of this article. *See* art. 44.01(e).

Rule 25.2(a) of the Rules of Appellate Procedure additionally provides that "[t]he State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01." *See* TEX. R. APP. P. 25.2(a). And rule 25.2(g), which describes the effect of a criminal-case appeal under rule 25.2, states that:

> Once the record has been filed in the appellate court, all further proceedings in the trial court–except as provided otherwise by law or by these rules–will be suspended until the trial court receives the appellate-court mandate. *See* TEX. R. APP. P. 25.2(g).

This Court recently addressed, in *State v. Robinson*, the impact of article 44.01(e) and rule 25.2(g) on a trial court's jurisdiction over a criminal case pending the disposition of a State's appeal filed under article 44.01. In *Robinson*, the State, appealing the trial court's grant of continuing-jurisdiction community supervision ("shock probation"), filed its notice of appeal on February 14, 2012, which was forty-nine days after the defendant started serving his sentence on December 28, 2011. *See Robinson*, 498 S.W.3d at 916. The trial court's grant of

shock probation was ultimately reversed on the State's appeal because the trial court had failed to hold a hearing as required by TEX. CRIM. PROC. CODE art. 42.12 § 6(c), and mandate issued on that State's appeal on August 19, 2013. *See Robinson*, 498 S.W.3d at 916, 921. When the trial court, on October 21, 2013, sixty-two days after mandate issued on the State's appeal, held the requisite hearing on the defendant's motion for shock probation, the State argued that the trial court lacked jurisdiction to grant the motion because more than 180 days had lapsed since the defendant's sentence began on December 28, 2011. *See id*.

Noting that article 44.01(e) provides that the State is entitled to a stay in the trial-court proceedings pending the disposition of the State's appeal in that case, this Court held that "[w]hen the State seeks to exercise its right to appeal an order modifying an existing judgment, the trial court is deprived of jurisdiction over the case during the pendency of such an appeal, and the court would be unable to modify or alter its ruling during that period." *See id*. at 921; *see also* TEX. CRIM. PROC. CODE art. 44.01(e). This Court further cited to Judge Alcala's concurring opinion in *Kirk v. State* for the proposition that, pursuant to rule 25.2(g), once the appellate record has been filed in the appellate court, "all further proceedings in the trial court...will be suspended until the trial court receives the appellate court mandate." *See Robinson*, 498 S.W.3d at 921, *citing Kirk v. State*, 454 S.W.3d 511,

516 (Tex.Crim.App. 2015) (Alcala, J., concurring), *quoting* TEX. R. APP. P. 25.2(g). The trial court would then be bound by the appellate-court's subsequent ruling on the merits of the appeal. *See Robinson*, 498 S.W.3d at 921.

This Court ultimately held that the defendant was still within the 180-day period to receive shock probation because the filing of the State's appeal deprived the trial court of any continuing jurisdiction from the time the State filed its notice of appeal until the issuance of the appellate-court mandate, such that only a total of 111 days (49 days between the December 28, 2011, date upon which the defendant started serving his sentence and the filing of the State's notice of appeal on February 14, 2012, and 62 days between the issuance of the appellate-court mandate on August 19, 2013, and the October 21, 2013, date upon which the trial court granted shock probation). *See Robinson*, 498 S.W.3d at 921.

Thus, under the plain language of article 44.01(e), and as recognized by this Court in *Robinson*, the filing of the State's notice of appeal during a time in which a trial court would otherwise have continuing jurisdiction over a criminal case deprives the trial court of that continuing jurisdiction pending the disposition of the State's appeal. *See Robinson*, 498 S.W.3d at 921; *Kirk*, 454 S.W.3d at 516-17 (Alcala, J., concurring) (opining that in light of article 44.01(e), "once the State seeks to exercise its right to appeal an order granting a new trial, the trial court

would be deprived of jurisdiction over the case during the pendency of such an appeal, and the court would be unable to modify or alter its ruling on the new-trial motion during that period"), *citing* TEX. CRIM. PROC. CODE art. 44.01(e); TEX. R. APP. P. 25.2(g); *see also Awadelkariem v. State*, 974 S.W.2d 721, 729 (Tex.Crim.App. 1998) (Meyers, J., concurring) (opining that a trial court's jurisdiction to rescind its ruling on a motion for new trial may be severed by the filing of an appeal and that if the trial court grants a defendant's new-trial motion, and the State timely appeals that order, the trial court loses its jurisdiction over the cause and has no authority to change its ruling), *overruled in part by Kirk v. State*, 454 S.W.3d 511, 515 (Tex.Crim.App. 2015); *Richardson v. State*, Nos. 02-15-00271-CR, 02-15-00272-CR, 2016 WL 6900901 at *2 n.5 (Tex.App.–Fort Worth, Nov. 23, 2016, pet. ref'd) (mem. op.) (not designated for publication) (noting that, pursuant to article 44.01(e), the State's filing of an interlocutory appeal automatically stayed the proceedings in the underlying criminal case).

Additionally, courts, including this Court, have held that, pursuant to what is now rule 25.2(g), once the appellate record is filed with an appellate court, the trial court no longer has jurisdiction to adjudicate the case and cannot thereafter regain jurisdiction unless the appellate court returns the case to that court. *See Lopez*, 18 S.W.3d at 639 (holding that once an appellate court obtains jurisdiction,

the trial court loses jurisdiction and cannot thereafter regain jurisdiction unless the appellate court returns the case to that court); *Berry v. State*, 995 S.W.2d 699, 700-01 (Tex.Crim.App. 1999) (interpreting former rule 25.2(e), now rule 25.2(g), as depriving a trial court of jurisdiction once the appellate record is filed in the appellate court);[6] *Green v. State*, 906 S.W.2d 937, 939 (Tex.Crim.App. 1995) (holding that, under former rule 40(b)(2), now rule 25.2(g), the trial court no longer has jurisdiction to adjudicate the case once the appellate record has been filed with either an intermediate appellate court or this Court);[7] *Drew*, 765 S.W.2d at 535; *Farris v. State*, 712 S.W.2d 512, 514 (Tex.Crim.App. 1986) (holding that, under article 44.11 of the Code of Criminal Procedure, one of the predecessors to now rule 25.2(g), a trial court's power to act in a given case ends when the appellate record is filed in an appellate court, except for matters concerning

---

[6] The language of former rule 25.2(e) is almost identical to current rule 25.2(g):

> Once the record has been filed in the appellate court, all further proceedings by the trial court–except as provided otherwise by law or by these rules–will be suspended until the trial court receives the appellate-court mandate. *See Berry*, 995 S.W.2d at 700, *quoting* former TEX. R. APP. P. 25.2(e).

[7] The language of former rule 40(b)(2) is also substantially similar to current rule 25.2(g):

> In the appeal of a criminal case when the record has been filed in the appellate court all further proceedings in the trial court, except as provided by law or by these rules, shall be suspended and arrested until the mandate of the appellate court is received by the trial court. *See* former TEX. R. APP. P. 40(b)(2).

bond);[8] *Duncan v. Evans*, 653 S.W.2d 38, 39 (Tex.Crim.App. 1983) (characterizing predecessor article 44.11 as a "jurisdictional hurdle" that deprives a trial court of the authority to act, except as to matters related to bond, once the appellate record has been filed with the appellate court); *Ex parte Johnson*, 652 S.W.2d 401, 402 (Tex.Crim.App. 1983); *State ex. rel. Vance v. Hatten*, 508 S.W.2d 625, 628 (Tex.Crim.App. 1974) (holding that once this Court has acquired jurisdiction, it is only by judgment of this Court that jurisdiction over the case is restored to the trial court); *see also* TEX. R. APP. P. 25.2(g).

And it is the appellate-court mandate that restores jurisdiction to the trial court after the disposition of a State's appeal and requires the trial court to comply with the appellate-court's judgment. *See* TEX. R. APP. P. 25.2(g); TEX. R. APP. P. 51.2 (providing the manner in which an appellate-court's judgment must be enforced after the trial-court clerk receives an appellate-court mandate in a criminal case); *see also Robinson*, 498 S.W.3d at 921, *citing Kirk*, 454 S.W.3d at 516 (Alcala, J., concurring); *Berry*, 995 S.W.2d at 700 (holding that after the

---

[8] Article 44.11 read, in relevant part, as follows:

> Upon the appellate record being filed in the court of appeals or the Court of Criminal Appeals, all further proceedings in the trial court, except as to bond as provided in Article 44.04, shall be suspended and arrested until the mandate of the appellate court is received by the trial court.... *See Ex parte Macias*, 2016 WL 7228898 at *5 n.4, *quoting* former TEX. CRIM. PROC. CODE art. 44.11.

appellate record has been filed, a trial court does not regain jurisdiction over the case until it receives a mandate from the appellate court); *Drew*, 765 S.W.2d at 535; *see also* TEX. GOV'T CODE § 22.226 ("When the court from which an appeal is taken is deprived of jurisdiction over the case pending the appeal and the case is determined by a court of appeals or the court of criminal appeals, the mandate of the appellate court that determines the case shall be directed to the court that had jurisdiction over the case, as also provided by Section 22.102."); TEX. GOV'T CODE § 22.102; BLACK'S LAW DICTIONARY (10th ed. 2014), *available at* Westlaw BLACK'S (defining "mandate" as "[a]n order from an appellate court directing a lower court to take a specified action").

Notwithstanding, however, the plain language of article 44.01(e), rule 25.2(g), and this Court's decision in *Robinson*,[9] the Eighth Court held in this case that rule 25.2(g)'s jurisdictional bar applies only to appeals arising from a final judgment of conviction and not to interlocutory appeals, such that the trial court retained jurisdiction during the pendency of the State's interlocutory appeal and could proceed to a trial on the merits of the underlying criminal case before mandate issued. *See Ex parte Macias*, 2016 WL 7228898 at *1, 5. Then, without

[9] Because *Robinson* was handed down after this case had already been submitted to the Eighth Court on December 17, 2015, the State cited *Robinson* in its motion for rehearing.

citing to article 44.01(e), the provision under which the State obtained a stay of the proceedings during the pendency of its State's appeal,[10] the Eighth Court reasoned that its judgment on the State's appeal "became effective" on the same date it handed down its opinion (October 16, 2013) because it had only stayed the underlying proceedings "pending further order of [the] Court," and its October 16, 2013, judgment constituted such "further order." *See id*. at *9. The Eighth Court further held that because the trial court improperly terminated the trial on the erroneous belief that it lacked jurisdiction prior to the issuance of the appellate-court mandate, the State's retrial was jeopardy barred. *See id*. at *8-9.

The Eighth Court's distinction between interlocutory and post-conviction appeals for purposes of the trial court's jurisdiction during the pendency of a State's appeal is unsupported by the law or the plain language of article 44.01(e) and rule 25.2(g). In *Kirk*, this Court, in noting that it need not address whether a State's appeal of the trial court's order granting a new trial "...would temporarily prevent the trial court from rescinding an order granting a new trial by depriving the trial court of jurisdiction of the case while the appeal is pending," appeared to

[10] That the State obtained a stay order in this case should not be construed as any kind of agreement that the trial court would have otherwise retained jurisdiction over the underlying case because, after being confronted with several incidents where trial courts attempted to hold a trial on the merits of the underlying criminal case while the State's appeal was pending, the State began seeking stay orders in lieu of seeking petitions for writs of mandamus.

suggest that such an appeal, had one been filed, might have affected the trial court's authority to rescind the grant of a new trial during the pendency of the appeal. *See Kirk*, 454 S.W.3d at 511 n.1. In concurring opinions in *Kirk* and *Awadelkariem*, both Judges Alcala and Meyers opined that such a State's appeal would have deprived the trial court of jurisdiction and the ability to rescind the grant of a new trial, *see Kirk*, 454 S.W.3d at 516-17 (Alcala, J., concurring); *Awadelkariem*, 974 S.W.2d at 729 (Meyers, J., concurring), even though an appeal from an order granting a new trial, which this Court has characterized as a non-final, interim order, would be akin to an interlocutory State's appeal of a pretrial order suppressing evidence, that is, both State's appeals involve interim, non-final orders and occur at a time when there has not yet been a final determination of the defendant's guilt or innocence. *See Kirk*, 454 S.W.3d at 513-14; BLACK'S LAW DICTIONARY (10th ed. 2014), *available at* Westlaw BLACK'S (defining "interlocutory" as "interim or temporary; not constituting a final resolution of the whole controversy" and further defining "interlocutory appeal" as "an appeal that occurs before the trial court's final ruling on the entire case").[11]

---

[11] Specifically, this Court relied in part upon the following explanation by the California Supreme Court regarding the non-final nature of an order granting a new trial:

> An order granting a new trial is not final in the sense of being a final resolution of the case or a final determination of the defendant's guilt or innocence. On the contrary, an order granting a new trial does not finally dispose of the matter. In a

Just as the concurring judges made no distinction between a trial court's jurisdiction pending the disposition of a State's interlocutory appeal of a non-final, interim order and post-conviction State's appeals, rule 25.2(a), which only generally provides that "[t]he State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01," *see* TEX. R. APP. P. 25.2(a), and rule 25.2(g), which addresses the effect of an appeal filed under rule 25.2, *see* TEX. R. APP. P. 25.2(g), similarly make no distinction whatsoever between interlocutory and post-conviction State's appeals. That courts, including this Court, have required abatement and remand to allow a trial court to supply missing findings of fact and conclusions of law in a State's interlocutory appeal, where such actions are typically necessary only because a trial court has been deprived of jurisdiction, supports the conclusion that a trial court loses jurisdiction even during the pendency of a State's interlocutory appeal. *See Berry*, 995 S.W.2d at 701; *Green*, 906 S.W.2d at 940 n.4; *Farris*, 712 S.W.2d at 514 n.2; *Duncan*, 653 S.W.2d at 40 (cases holding that the proper procedure to restore jurisdiction in the trial court to supplement the record or enter findings of

---

criminal case, the granting of a new trial places the parties in the same position as if no trial had been had. Thus, an order granting a new trial is an interim order in the sense that it requires further proceedings before the case may be resolved and judgment may be pronounced. *See Kirk*, 454 S.W.3d at 513-14, *quoting People v. DeLouize*, 89 P.3d 733, 738 (Cal. 2004) (internal quotations and citations omitted).

fact is for the appellate court to abate the appeal and remand the cause to the trial court); *see also State v. Saenz*, 411 S.W.3d 488, 498 (Tex.Crim.App. 2013); *State v. Elias*, 339 S.W.3d 667, 679 (Tex.Crim.App. 2011); *State v. Adams*, 454 S.W.3d 38, 47-48 (Tex.App.–San Antonio 2014, no pet.) (cases involving State's interlocutory appeals where abatement and remand was necessary for a trial court to regain jurisdiction to supply missing findings of fact and conclusions of law).

Acknowledging, however, that "[o]n its face, Rule 25.2(g) seemingly denied the trial court any jurisdiction to act from May 8, 2012 (the date the record was filed in the earlier appeal) to January 30, 2013 [sic] (the date the mandate issued)," the Eighth Court nevertheless held that rule 25.2(g) contains an expansive "exceptions clause" that "includes anything 'as provided otherwise by law or these rules,'" and that its prior decision in *In re State*, 50 S.W.3d 100 (Tex.App.–El Paso 2001, orig. proceeding), which in turn relied on *Peters v. State*, 651 S.W.2d 31 (Tex.App.–Dallas 1983, pet. dism'd), supplied such an exception for interlocutory appeals. *See Ex parte Macias*, 2016 WL 7228898 at *5, *quoting* TEX. R. APP. P. 25.2(g). Specifically, guided by TEX. R. APP. P. 29.5, an appellate rule providing that a trial court retains jurisdiction over the underlying *civil* case during an interlocutory *civil* appeal and may proceed to trial or make further orders that do not interfere with the relief being sought on appeal, the Eighth Court in *In re State*

held that although there existed no analogous rule governing interlocutory criminal appeals, an interlocutory-appeal exception to rule 25.2(g) is premised on the general principle recognized by the *Peters* court that "...an appeal from a preliminary order does not suspend the trial court's power to proceed on the merits." *See In re State*, 50 S.W.3d at 103; *quoting Peters*, 651 S.W.2d at 33. The Eighth Court in *In re State* also relied on the following reasoning by the *Peters* court for the proposition that rule 25.2(g) does not apply to interlocutory State's appeals:

> Article 44.11 [(the predecessor to rule 25.2)] suspends proceedings in the trial court only in case of an appeal from a final judgment of conviction. It has never been applied to an appeal from denial of a pre-conviction writ of habeas corpus. To apply the statute in that context would permit interlocutory appeals by way of habeas corpus, with consequent delay in criminal trials–a result contrary to the evident legislative intent. *See Peters*, 651 S.W.2d at 33.

Again, for the reasons stated above, the plain language of article 44.01(e) and rule 25.2(g) does not support a distinction between interlocutory and post-conviction State's appeals in criminal cases. Also, not only did *Peters* involve a defendant's interlocutory appeal of the denial of habeas relief, *Peters* was decided before the Texas Legislature conferred upon the State the right to appeal in a criminal case and to have the proceedings automatically stayed pending the disposition of that appeal. *See Robinson*, 498 S.W.3d at 921 (explaining that the

State did not obtain the right to appeal in a criminal case until 1987). A delay in the underlying criminal case pending the disposition of a State's interlocutory appeal is expressly contemplated by the plain language of article 44.01(e). *See* art. 44.01(e).

Consequently, the reasoning in *Peters*, upon which the Eighth Court relied in *In re State* and this case, does not support a distinction between interlocutory and post-conviction State's appeals in criminal cases, such that the Eighth Court's construction of rule 25.2(g) as permitting a trial court to retain jurisdiction and act upon the underlying criminal case during the pendency of a State's appeal runs afoul of the plain language of article 44.01(e) and impermissibly abridges the State's right to appeal. *See Lopez*, 18 S.W.3d at 640 (rejecting appellant's invitation to use a rule of appellate procedure to enlarge upon the substantive rights of a litigant as provided by the Texas Legislature); *see also* TEX. GOV'T CODE § 22.108(a) (providing that the Rules of Appellate Procedure may not abridge, enlarge, or modify the substantive rights of a litigant).

The Eighth Court's reasoning that its judgment on the State's appeal "became effective" on the same date it handed down its opinion (October 16, 2013) because it had only stayed the underlying proceedings "pending further order of [the] Court," and its October 16, 2013, judgment constituted such "further

order," *see Ex parte Macias*, 2016 WL 7228898 at *9, also erroneously fails to give proper effect to the plain language of article 44.01(e) and renders the appellate-court mandate a meaningless formality. According to the plain language of article 44.01(e), the State is entitled to a stay of the underlying criminal case until the disposition of its appeal. *See* art. 44.01(e). "Disposition" is defined as "a *final* settlement or determination." *See* BLACK'S LAW DICTIONARY (10th ed. 2014), *available at* Westlaw BLACK'S (emphasis added).

Subsection (h) of article 44.01, providing that a petition for discretionary review filed by the State in this Court is governed by the Rules of Appellate Procedure, is "...a tacit recognition that discretionary review is a form of appeal." *See Ex parte Taylor*, 36 S.W.3d 883, 891 (Tex.Crim.App. 2001) (Keller, J., dissenting); *see also Faulder v. State*, 612 S.W.2d 512, 514 (Tex.Crim.App. 1980) (holding that review of a criminal case, "whether denominated an appeal, a writ of error, a writ of certiorari, or any other name, is still an appeal"); *see also* art. 44.01(h). Thus, contrary to the Eighth Court's determination that the disposition of the State's appeal in this case occurred on the date the Eighth Court rendered its judgment and opinion (October 16, 2013), *see Ex parte Macias*, 2016 WL 7228898 at *9, a *final* disposition of a State's appeal would include not only review by an intermediate appellate court, but also any discretionary review by

this Court, at the very least. *See*, *e.g.*, *Faulder*, 612 S.W.2d at 514 (recognizing that review of a criminal case, regardless of how it is denominated, is an appeal).

And if one of the purposes of an appellate-court mandate is to *return* jurisdiction to the trial court, *see* TEX. GOV'T CODE § 22.226, and if, as the Eighth Court held, rule 25.2(g) never deprived the trial court of jurisdiction during the pendency of the State's interlocutory appeal in this case, the Eighth Court's issuance of a mandate on the State's interlocutory appeal served no purpose at all. If the Eighth Court's judgment became binding on the trial court on the date the Eighth Court issued its judgment and opinion (October 16, 2013), prior to the issuance of its mandate on January 30, 2014, it was also unnecessary for the Eighth Court to issue a mandate commanding the trial court to "...observe the order of our said Court of Appeals for the Eighth District of Texas, in this behalf, and in all things have it duly recognized, obeyed and executed." (CR:76).

Contrary to the Eighth Court's reasoning, the appellate-court mandate is not simply a meaningless formality. As previously discussed, the appellate-court mandate serves to restore jurisdiction to the trial court after the disposition of an appeal and constitutes the order that compels (and binds) a lower court to enforce the judgment of the appellate court. *See* TEX. R. APP. P. 25.2(g); TEX. R. APP. P. 51.2 (providing the manner in which an appellate-court's judgment must be

enforced after the trial-court clerk receives an appellate-court mandate in a criminal case); *see also Robinson*, 498 S.W.3d at 921, *citing Kirk*, 454 S.W.3d at 516 (Alcala, J., concurring); *Berry*, 995 S.W.2d at 700; *Drew*, 765 S.W.2d at 535; *see also* TEX. GOV'T CODE §§ 22.102, 22.226; BLACK'S LAW DICTIONARY (10th ed. 2014), *available at* Westlaw BLACK'S (defining "mandate" as "[a]n order from an appellate court directing a lower court to take a specified action").[12]

In other words, the appellate-court mandate signifies the *final* disposition of, and the termination of appellate-court jurisdiction over, the appeal (and the restoration of jurisdiction, if any, to the trial court). *Cf. Johnson v. State*, 784 S.W.2d 413, 414 (Tex.Crim.App. 1990) ("A conviction from which an appeal has been taken is not considered final until the appellate court affirms the conviction *and issues its mandate*.") (emphasis added). It is at that point, then, when mandate

[12] Even though the Eighth Court relied on civil TEX. R. APP. P. 29.5 as guidance in *In re State* in holding that a trial court retains the authority to proceed to a trial on the merits during the pendency of a State's interlocutory appeal in a criminal case, *see In re State*, 50 S.W.3d at 103; *quoting Peters*, 651 S.W.2d at 33; *see also Ex parte Macias*, 2016 WL 7228898 at *6, the Eighth Court did not similarly rely on as guidance TEX. R. APP. P. 18.6, which states that an appellate-court's judgment in an accelerated interlocutory appeal takes effect when mandate issues, instead holding that rule 18.6 was inapplicable because the State's interlocutory appeal in this case was not truly an accelerated appeal. *See Ex parte Macias*, 2016 WL 7228898 *9. Regardless of whether rule 18.6, which, unlike rule 29.5, appears to apply to both criminal and civil cases, directly applies to the type of State's appeal pursued in this case, the substance of the rule still supports the conclusion that jurisdiction is not restored to the trial court to comply with the Eighth Court's judgment until mandate issues, particularly where there exists no logical reason for an appellate-court mandate to have differing effects based on whether the interlocutory appeal is accelerated or non-accelerated in nature.

issues on the appellate-court's judgment, that the State's interlocutory appeal has reached a *final* disposition for purposes of the jurisdictional bar in article 44.01(e).

In this case, the Eighth Court simply failed to give effect to the plain language of rule 25.2(g) and article 44.01(e). Rather, under the Eighth Court's interpretation, nothing prevents a trial court from proceeding to trial on the merits immediately after an intermediate appellate court renders its opinion on a State's interlocutory appeal, even though most of the bases upon which the State may exercise its limited right to appeal involve matters that vitally affect the criminal case. *See generally* art. 44.01; *see also* art. 44.01(a)(5) (allowing the State to appeal an order suppressing evidence only where that evidence "is of substantial importance" to the criminal case).[13] The Eighth Court's construction is particularly troublesome because it prevents the non-prevailing party–whether it be the defendant or the State–in an interlocutory State's appeal from having a meaningful opportunity to pursue higher review, such as a rehearing or discretionary review by this Court–an absurd result that the Legislature or this Court could not have intended. Even worse, in the absence of a stay order, a trial

[13] "Some interlocutory appeals involve legal points necessary to the determination of the case, while others involve collateral matters that are wholly separate from the merits of the action." *See* BLACK'S LAW DICTIONARY (10th ed. 2014), *available at* Westlaw BLACK'S. Most State's appeals would constitute the former.

court could proceed to a trial on the merits at the same time the State appeals the suppression of evidence, forcing the State to dismiss its appeal because it can no longer certify that jeopardy has not attached, as is required by article 44.01(a)(5).

Under a proper construction of rule 25.2(g) and article 44.01(e) that gives effect to the plain language stated therein: (1) the trial court lost jurisdiction under article 44.01(e) when the State filed its appeal on March 27, 2012, (2) rule 25.2(g) simultaneously operated to deprive the trial court of jurisdiction upon the filing of the appellate record on May 8, 2012, and (3) jurisdiction was not returned to the trial court in this case until issuance of the appellate-court mandate on January 30, 2014, which constituted the final disposition of the State's appeal. *See Robinson*, 498 S.W.3d at 921; *see also* TEX. R. APP. P. 25.2(g); TEX. CRIM. PROC. CODE art. 44.01(e).

II. Because the trial court had no jurisdiction to try the case on its merits on January 16, 2014, the trial proceedings were null and void in their entirety, such that jeopardy never attached, the trial court's termination of the proceedings was proper, and Macias's retrial is not jeopardy barred.

The double-jeopardy clause of the Fifth Amendment protects a criminal defendant from repeated prosecution for the same offense. *See* U.S. CONST. amend. V; TEX. CONST. art. I, § 14; *see also Ex parte Chaddock*, 369 S.W.3d 880, 882 (Tex.Crim.App. 2012). And while jeopardy generally attaches when a jury is

impaneled and sworn, *Ex parte Brown*, 907 S.W.2d 835, 839 (Tex.Crim.App. 1995), *citing Crist v. Bretz*, 437 U.S. 28, 35, 98 S.Ct. 2156, 2161, 57 L.Ed.2d 24 (1975), the double-jeopardy clause is not implicated before a court of incompetent jurisdiction. *See Serfass v. United States*, 420 U.S. 377, 391, 95 S.Ct. 1055, 1064, 43 L.Ed.2d 265 (1975) (holding that the double-jeopardy clause is not implicated until a proceeding begins before a trier of fact having jurisdiction to try the question of the guilt or innocence of the accused), *citing Kepner v. United States*, 195 U.S. 100, 133, 24 S.Ct. 797, 806, 49 L.Ed.2d 114 (1904).

As the Eighth Court correctly held, "[a]bundant authority holds that actions taken by a trial court without jurisdiction are null and void," and "a trial conducted without the jurisdiction to do so is no trial at all for double jeopardy purposes." *See Ex parte Macias*, 2016 WL 7228898 at *4, *citing Kepner*, 195 U.S. at 129 ("An acquittal before a court having no jurisdiction is, of course, like all the proceedings in the case, absolutely void, and therefore no bar to subsequent indictment and trial in a court which has jurisdiction of the offense."); *Hoang v. State*, 872 S.W.2d 694, 698 (Tex.Crim.App. 1993); *see also Gallemore v. State*, 312 S.W.3d 156, 159 (Tex.App.–Fort Worth 2010, no pet.) ("[A] subsequent prosecution for the same offense is not jeopardy-barred when the initial conviction

was obtained in the absence of jurisdiction because such a conviction is a nullity, and jeopardy does not attach.").

That a litigant fails to object, or even consents, to a trial court conducting a proceeding without jurisdiction does not serve to confer jurisdiction where none otherwise exists because jurisdiction cannot be conferred by agreement or consent. *See Riewe*, 13 S.W.3d at 413. And the Texas Legislature has expressly provided that retrial is not barred where an earlier trial was terminated for lack of jurisdiction:

> If it appears during a trial that the court has no jurisdiction of the offense,...the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense unless termination of the former prosecution was improper.

See TEX. CRIM. PROC. CODE art. 36.11; *see also Drew*, 765 S.W.2d at 536 (holding that where a court lacks jurisdiction, "...it should proceed no further than to dismiss the cause for want of power to hear and determine the controversy" and that "...any order or decree entered, other than one of dismissal, is void").

When the trial court in this case proceeded to a trial on the merits on January 16, 2014, before jurisdiction was restored to it by the appellate-court mandate on January 30, 2014, the trial proceedings, including the act of impaneling and swearing in a jury, were null and void in their entirety. *See Berry*,

995 S.W.2d at 701 (holding that because supplemental findings of fact were made after the record was filed in the appellate court, at a time when the trial court lacked jurisdiction, said findings were null and void); *Green*, 906 S.W.2d at 939 (holding that where the filing of the appellate record deprived the trial court of jurisdiction over the underlying criminal case, the trial court's written order setting out findings of fact and conclusions of law, entered nearly a year later, was null and void); *Garcia v. Dial*, 596 S.W.2d 524, 528 (Tex.Crim.App. 1980) ("[I]t is axiomatic that where there is no jurisdiction, []the power of the court to act is as absent as if it did not exist[], and any order entered by a court having no jurisdiction is void.") (internal quotations and citations omitted); *Drew*, 765 S.W.2d at 535-36 (holding that the defendant's retrial and subsequent conviction, where jurisdiction had not yet been restored to the trial court by the appellate-court mandate, were void).

Because the trial court lacked jurisdiction to call Macias's case for trial on January 16, 2014, jeopardy never attached, such that the trial court's termination of the proceedings was proper, and Macias's retrial is not jeopardy barred. *See*, *e.g.*, *Kepner*, 195 U.S. at 129; *Hoang*, 872 S.W.2d at 698; *see also Garcia*, 596 S.W.2d at 530 (holding that once the trial court dismissed the indictment, the trial court lost jurisdiction, such that a subsequent order reinstating the indictment was

null and void, and the defendant's trial under void indictment "would not bar his subjection to still another trial for the same offense, even if [defendant] were acquitted."); *Gallemore*, 312 S.W.3d at 159.

Macias bore the burden to prove that he is entitled to his requested habeas-corpus relief on the basis of a double-jeopardy violation. *See Ex parte Peterson*, 117 S.W.3d 804, 818 (Tex.Crim.App. 2003) (holding that in raising a double-jeopardy claim on a pretrial writ of habeas corpus, the burden of proof is on the habeas applicant, as in any habeas-corpus proceeding), *overruled on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex.Crim.App. 2007). Because the trial court lacked jurisdiction to try the case on the merits, which Macias has yet to dispute either in the trial court or on direct appeal, *see* (SRR:4-12); *see also* (Macias's appellate brief at 12-18), such that jeopardy never attached, Macias failed his burden of proving that his retrial is jeopardy barred. Although Macias argues that his retrial is jeopardy barred because he "...was put to the fight," *see* (Macias's appellate brief at 18), article 36.11 and the foregoing case law provides that being "...put to the fight" is no bar to a retrial if the trial court lacked jurisdiction to entertain such a fight in the first place.

For all the foregoing reasons, where an appellate-court mandate on the final disposition of the State's interlocutory appeal had not yet restored jurisdiction to the trial court, the trial court properly terminated Macias's January 16, 2014, pre-mandate trial for lack of jurisdiction, such that the Eighth Court erred in reversing the trial court's denial of Macias's requested habeas relief on the basis of a double-jeopardy violation.

PRAYER

WHEREFORE, the State prays that this Court reverse the judgment of the Eighth Court and remand the case to the trial court for further proceedings.

Respectfully submitted,

JAIME ESPARZA
DISTRICT ATTORNEY
34th JUDICIAL DISTRICT

/s/ Lily Stroud
LILY STROUD
ASST. DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
201 EL PASO COUNTY COURTHOUSE
500 E. SAN ANTONIO
EL PASO, TEXAS 79901
(915) 546-2059 ext. 3769
FAX (915) 533-5520
EMAIL lstroud@epcounty.com
SBN 24046929

ATTORNEYS FOR THE STATE

CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the foregoing document contains 7,773 words.

/s/ Lily Stroud
LILY STROUD

CERTIFICATE OF SERVICE

(1) The undersigned does hereby certify that on July 25, 2017, a copy of the foregoing brief on the State's petition for discretionary review was sent by email, through an electronic-filing-service provider, to appellant's attorneys: Matthew DeKoatz, mateodekoatz@yahoo.com; Maximino Daniel Munoz, maxmunoz1@sbcglobal.net.

(2) The undersigned also does hereby certify that on July 25, 2017, a copy of the foregoing brief on the State's petition for discretionary review was sent by email, through an electronic-filing-service provider, to the State Prosecuting Attorney, information@SPA.texas.gov.

/s/ Lily Stroud
LILY STROUD